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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,147	01/16/2004	Lawrence I. Wechsler	W1000-24	7189

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Great Neck, NY 11023

EXAMINER

NGUYEN, TRINH T

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3644

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/760,147	Applicant(s) WECHSLER, LAWRENCE I.	
	Examiner Trinh T. Nguyen	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE dated 2/27/09.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17 and 21-39 is/are pending in the application.
- 4a) Of the above claim(s) 26 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17, 21-25, 28-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination under 37 CFR 1.114 After Final Rejection

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/27/09 has been entered.

Election/Restrictions

2. Newly submitted claims 26 and 27 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 26 and 27 are directed to the non-elected species of Figures 1-3b. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 26 and 27 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 17,21-25,28-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter

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which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In this case, the limitations "providing the toy with an animal restricted region which is less likely to be accessed by the mouth of the animal", "which the pet is more likely to bite and hold in a mouth of the pet by virtue of at least one of enhanced sensory attraction or greater relative physical accessibility to the pet than said animal restricted region", "at least another portion of the toy which is conversely less likely to be accessed by the pet during play by reason of at least one of less sensory appeal or structural inaccessibility to the pet than said animal access region, such that saliva of the pet is deposited to at least a lesser degree on said toy within said animal access region as compared to said animal restricted region when the toy is naturally picked up in the mouth of the pet" are unclear since it is not understood on how these steps can be performed accurately since animal's actions are unpredictable and uncertain. Furthermore, it is not understood on how "gripping of the animal access region in the mouth of the animal" is performed accurately since the animal's action is unpredictable and uncertain and that the animal can/might bite the toy at any areas other than the animal access region.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 17,21-25,28-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are replete with indefinite phrases too numerous to mention completely, Applicant is encouraged to carefully review the claims and rewrite them so that all claimed limitations are positively and clearly set forth and it can be determined what is being claimed.

The following are examples only and not intended to be a complete listing thereof:

It is unclear what the phrases “less likely”, “more likely”, “enhanced sensory attraction or greater relative physical accessibility”, “conversely less likely”, “less sensory appeal or structural inaccessibility”, “lesser degree” intend to define.

The phrases “at least one structural portion”, “at least one grip”, “a shielding portion”, “said members” lack proper antecedent basis.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 17,21-25,28-39 (as best understood due to the rejection under 35 U.S.C. 112, first and second paragraphs above) are rejected under 35 U.S.C. 102(b) as being anticipated by Niewolak (US 3671039).

For claims 17, 21, 24 and 39, Niewolak teaches a play toy comprising an animal access region (30,37,36,34) having at least one structural portion (30,37,36,34) in which serves as a shielding portion and an animal restricted region (42) having at least one grip (note that any portion along region (42) can be used as a grip).

For claim 22, Niewolak teaches said providing includes creating the animal restricted region by providing shielding structure (30,37,36,34) which physically deters the pet from accessing said animal restricted region (42) from access by the mouth of the pet, yet allows the hand of the human user to access the animal restricted region.

For claim 23, Niewolak teaches said animal restricted region (42) includes at least one handle (note that any portion along region (42) can be used as a handle) graspable by the hand of the human user, said at least one handle including a portion (note that any portion along region (42) can be considered as a portion as claimed) extending longitudinally at least partially along a handle axis; and said shielding structure (30,37,36,34) includes at least one structural portion disposed in a spaced apart radial position of said handle relative to said handle axis, said at least one structural portion being located so as to be at least partially coextensive with an axial positioning of said handle.

For claim 25, Niewolak teaches said at least one structural portion includes an elongated member (42) extending along a toy axis; said at least one grip includes at least one handle (note that any portion along region (42) can be used as a handle) disposed at least one of opposed ends of said elongated member; and said shielding

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portion includes shielding structure (30,37,36,34) extending radially at least partially about said at least one handle.

For claim 28, Niewolak teaches said at least one handle includes two handles disposed respectively at the opposed ends of said elongated member (note that any portion along region (42) can be used as a handle; one handle can be defined near member 38 while another handle can be defined near member 40).

For claim 29, Niewolak teaches said at least one structural portion includes elements (30,37,36,34) disposed in circumferentially spaced apart positions about a toy axis and which include portions thereof which are radially spaced apart from said toy axis.

For claim 30, Niewolak teaches said members include at least three members (30,37,36,34), at least a portion of each of the members extending longitudinally co-directional with said toy axis.

For claim 31, Niewolak teaches said at least a portion of said three members (30,37,36,34) which extend longitudinally are spaced apart circumferentially from one another by approximately equal angular intervals.

For claim 32, Niewolak teaches said at least one grip includes at least one handle (note that any portion along region (42) can be used as a handle) of elongated dimension arranged along a longitudinal handle axis which is approximately aligned with the toy axis; and said portions of said members (30,37,36,34) which are radially spaced apart from said toy axis are extended outward from a center of the toy in an axial

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direction such that said portions extend past an axial position of an inwardmost end of the handle closest to said center, thereby at least partially shielding the handle.

For claim 33, Niewolak teaches said portions of said members (30,37,36,34) which are radially spaced apart from said toy axis are configured to collectively describe a generally spherical envelope.

For claim 34, Niewolak teaches the toy to be a self-righting, such that when landing onto a generally horizontal support surface, the toy is free to roll as a ball yet, will generally come to rest with the handle extending generally horizontally.

For claim 35, Niewolak teaches said providing includes integrally molding the toy.

For claim 36, Niewolak teaches the toy is comprised of a resilient material.

For claim 37, Niewolak teaches a toy axis passes through said at least one handle (note that any portion along region (42) can be used as a handle), said at least one handle being accessible by the hand of the user at least in a direction of said toy axis; and said structure (30,37,36,34) at least partially physically shielding said animal restricted region (42) from access by the mouth of the pet is at least partially defined by structural portions of said animal access regions arranged to at least partially surround at least an axially coextensive portion of said handle thereby forming a radial opening (22,24,26,28) of a predetermined size in such a manner as to discourage access by the mouth of the pet to said handle when approached from a general direction along said toy axis based upon the predetermined size of said radial opening suitably selected to allow passage of the hand therethrough for access to said handle, but to discourage access thereof by the mouth of the pet.

For claim 38, Niewolak teaches said handle (note that any portion along region (42) can be used as a handle) is defined at least partially by an elongated member extending longitudinally codirectionally with said toy axis; and said structural portions (30,37,36,34) of said animal access regions which are arranged to at least partially surround at least the coextensive portion of said handle are extended outward from a central region of the toy in an axial direction to an axial position proximately coinciding with a corresponding axial position of a terminal end of said at least one handle.

Furthermore, it is noted that the method steps as claimed in claims 17,21,22,24, and 39 are inherently performed within Niewolak's play toy wherein the play toy of Niewolak comprises all of the specific structural components similar to those claimed by the applicant and since it is well known in the art of animal husbandry (especially in animal toy) that such method steps will be depended on the user's choice of preference on whether to provide an interactive play with the animal or not.

Response to Arguments

9. Applicant's arguments filed 2/27/09 have been fully considered but they are not persuasive.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (1:30 P.M to 10:00 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on (571) 272-6608. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Trinh T Nguyen/
Primary Examiner, Art Unit 3644
3/22/09